

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 24, 2006**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, July 24, 2006 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:09 p.m. The following were present: Chair Hugh Holston, Scott Brewington, Ann Buffington, John Cross and Russ Parmele. Bill Ruska, Zoning Administrator, represented the Planning Department and Blair Carr, Esq., represented the City Attorney's Office.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Ms. Buffington moved approval of the minutes of the June 26, 2005 meeting as written, seconded by Mr. Brewington. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Cross, Parmele. Nay: None.)

Mr. Ruska was sworn in for all testimony by him at this meeting.

OLD BUSINESS

VARIANCE

- A) BOA-06-30: 199 COUNTRY CLUB DRIVE - BILLY HUNT REQUESTS A VARIANCE FROM A CENTERLINE STREET SETBACK REQUIREMENT. VIOLATION: A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 7.5 FEET INTO A 40-FOOT CENTERLINE SIDE SETBACK FROM WENTWORTH DRIVE. THIS CASE WAS CONTINUED FROM THE MAY 22, AND JUNE 26, 2006 MEETINGS. TABLE 30-4-6-1, PRESENT ZONING-RS-9, BS-28, CROSS STREET-WENTWORTH DRIVE. (GRANTED WITH CONDITIONS)**

Chair Holston said Mr. Cross had requested recusal from discussion or voting in this matter due to a conflict of interest.

Ms. Buffington moved that Mr. Cross be recused from discussion or voting in this matter, seconded by Mr. Parmele. The Board voted 4-0-1 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Parmele. Nays: None. Abstain: Cross.)

Mr. Ruska said Billy Hunt was the owner of a parcel located at 199 Country Club Drive. This case was continued from the May 22 and June 2, 2006 meetings. The lot is located between Country Club Drive and Wentworth Drive, west of North Elm Street on Zoning Map Block Sheet 28. The property is currently zoned RS-9. The applicant is requesting a variance for a single family dwelling to encroach 7.5 feet into a 40-foot centerline setback from Wentworth Drive. The lot has a unique shape. For zoning purposes, Country Club Drive is determined to be the front and Wentworth Drive is a side street. The rear lot line is the line that is described as 81.77 feet on the map. Wentworth Drive has a substandard dedicated right-of-way. The total dedication of right-of-way for this street is 35 feet. The building footprint shows 2,372 square feet on the ground. The adjacent properties are also zoned RS-9.

Chair Holston opened the public hearing.

Marc Isaacson, Esq., 101 West Friendly Avenue, previously sworn or affirmed, handed up materials for the Board's consideration. He represented Billy Hunt, owner of the subject property, who would like to build a single family residence on the property for he and his family. As indicated, the property is zoned RS-9 and is suitable for a single family home. The owners have had an architect prepare some plans, but they are affected primarily by two factors: the unique configuration of the property and the narrow width of Wentworth Drive to the rear of the proposed residence. After meeting with the neighbors in the area, they have reached an agreement or consensus on some conditions that should be added to this application. These three conditions are set out in the handouts.

Mr. Ruska said there was no way to add these conditions to the application. However, the Board, if it chose, could make them a part of the granting of the variance.

Counsel Carr confirmed Mr. Ruska's statement, stating the Board did have a right to limit the variance and to the extent the Board wanted to incorporate any of these conditions, she would help them along that path when the time comes for a motion.

Mr. Isaacson explained other documents or materials contained in his handout. He felt it was important for the Board to consider that this proposed residence does meet the 15-foot setback from the right-of-way, but it does not meet the setback from the centerline. So there is a 7-foot deficiency, which is the reason for this variance request. He felt it important to remember, as pointed out by Mr. Ruska, that Wentworth Drive is a substandard right-of-way in the sense that typically a collector would be 50-feet wide. This is only 35-feet wide. This variance, if approved, will allow for this home to be more uniform in the front line of the home with his neighbor, Mr. Nussbaum. He felt that was a factor considered under our ordinance in at least one other section where there is a goal or objective to try to line up residences with each other along the same side of the street. He then went over some factors he thought the Board should consider in deciding whether to grant this variance.

There was no one present to speak in opposition to the request. Chair Holston closed the public hearing.

Mr. Brewington expressed a concern for safety.

Mr. Ruska said if they have a request that usually triggers GDOT's attention, they will let us know about it. In this particular instance, the applicant would be meeting the typical 15-foot setback from a side street, but it is just because that right-of-way is substandard, they are getting caught up in the centerline setback, which they cannot meet.

Counsel Carr said the setback would be affected more so by the location of the driveway. In this instance we do not know that and it is not typically something that is to be noted at this point in time. When the building plans get put in place, then GDOT addresses driveway permits and there are sight distance requirements specifically for corner lots.

As to the requested conditions, Counsel Carr said she thought two of the conditions were defensible as conditions because they do go to the variance that the Board is addressing and that is a setback variance. To the extent that the purpose of a setback is, as Mr. Ruska stated, safety, then you believe that placing the garage so that it does not open onto Wentworth to assist in the safety of this reduced setback, she thought that was a laudable condition that could be adopted. The second one about the garage being on the western side of the property, that would be dealing with the western setback part of the interior setbacks that we place in the ordinance and are mainly for the comfort of the next door neighbor basically. If you believe that this goes to improving the setback that is there by taking living activities from that side of the lot, again she thought that too to be a laudable condition that would inure

to a zoning principle. The third one she simply could not endorse as it has no bearing on this variance request. She applauded Mr. Isaacson for approaching the neighbors, but to the extent that these are exacted promises, that cannot be considered by this Board.

Ms. Buffington said in the case of BOA-06-30, 199 Country Club Drive, and based on the stated findings of fact that would be incorporated in the record, she moved that the Zoning Enforcement Officer be overruled and the variance granted for the following reasons: She thought that the applicant proved there was significant hardship because of the uniqueness of the lot; she thought there were practical difficulties and unnecessary hardships; if they comply with the provisions of the ordinance they can make no "reasonable" use of the property because it is such a small lot; she did not think that the house was overwhelming or that what they are requesting is too large; the hardship of which the applicant complains results from the unique circumstances related to the applicant's property; the narrow width of Wentworth Drive does affect the right-of-way and it is a small street; the topography of the land where it slopes towards Wentworth added to the difficulties that are common to this lot; they do meet one of the setback requirements; the hardship results from the application of the ordinance; the proposed residence does meet one of the tests, but it does not meet both of them, and she felt it does meet the most important test; the hardship is not the result of the applicant's own actions in that the lot has been there for a very long time and obviously in a residential area that was meant for housing so she felt it had been a difficult lot with which to work; the granting of this variance will definitely keep with the purpose and intent of the ordinance in that it will allow the construction of a home that does, indeed, meet the harmony of the neighborhood and will not detract from it; the granting of the variance assures the public safety and welfare and does substantial justice; it will maintain the harmony and integrity of the neighborhood and take vacant lot and put a nice structure on it. She added that incorporated in this motion shall be Conditions No. 1, any garage shall not open onto Wentworth Drive, and Condition No. 2, any garage on the property shall be attached and located on the west side of the property.

Mr. Brewington seconded the motion. The Board voted 4-0-1 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Parmele. Nays: None. Abstain: Cross.)

SPECIAL EXCEPTION

A) BOA-06-31: 1403 CLIFFWOOD DRIVE - JIMMY MACK REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 970 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. THIS CASE WAS CONTINUED FROM THE JUNE 26, 2006 MEETING. PRESENT ZONING-RS-9, BS-41, CROSS STREET-GLEN HAVEN DRIVE. (DENIED)

Mr. Ruska said Jimmy Mack is the owner of the property located at the 1403 Cliffwood Drive. This case was continued from the June 26, 2006 meeting. The lot is located on the south side of Cliffwood Drive west of West Meadowview Road on Zoning Map Block Sheet 41. The property is zoned RS-9. The applicant is requesting a Special Exception as authorized by Section 30-5-2.37(b) to locate a proposed family care home with six or less persons 350 feet from an existing family care home of six or less persons instead of the required spacing of 1,320 feet. This location will not meet the spacing requirement by approximately 970 feet. This measure is established from property line to property line. The existing family care home is located at 1418 Corregidor Street, which is located south and east of the proposed family care home. The homes are separated by approximately five houses. There are two other proposed homes in the area. They have been proposed to be located at 1413 Cliffwood Drive and 1209 Kindley Street. If either of the owners of these locations pursues occupancy completion, they will need to be granted a Special Exception from 1403 Cliffwood Drive if this Special Exception is granted,

1416 Corregidor Street and from each other's locations. Attached is a copy of the updated report for the Board of Adjustment Special Exception Requests for family care homes from January through June 2006. The adjacent properties are also zoned RS-9.

Mr. Ruska said there were some questions raised at the public hearing last month. The home at 1416 Corregidor Street has a privilege license and is operating as a family care home. A visit was made to this location and a tenant was observed and the Enforcement Officer saw the paperwork from the State. The Enforcement Office was told that there was another tenant, making a total of two at that location. 1413 Cliffwood Drive, this home has a privilege license, but has not completed the process from the State. At 1209 Kindley Street, this home has a privilege license, but has not completed the process from the State and there are no tenants there at this time. They also had a reference turn up to 1306 Kirkman Street, which was not part of last month's hearing. For some reason, this address came up as a possible group home on the computer program. There is no privilege license listed for the location and a visit was made to this home and there does not appear to be a group home at this address.

Mr. Ruska said last month they were spacing the subject home from the home at 1209 Kindley and that is the one where there is a privilege license, but they have not completed the process from the State yet. The one at 1416 Corregidor was the one alleged to be operating last month and staff found that it, indeed, is operating so that reduces the separation from the applicant's proposed family care home to an existing one that is operating and has a business license down to 350 feet.

Chair Holston opened the public hearing.

Debra Mack, 1015 Linderwood Drive, and Jimmy Mack, 4015 Linderwood, both previously sworn or affirmed, were the applicants. Mr. Mack said they started this program just before the freeze on group homes came about. He presented information for the Board's consideration. He and his wife have been involved in care of children since their marriage through foster care, adoption, and what the Board sees here, which is starting their own program. They purchased this home with that in mind. They had everything in order until the State put a freeze on opening up homes for adolescents. During that time, the only one they knew about was another home opening up for adults. Once the freeze came about, they could have gone to an adult care home, but they had been into children and adolescents and that is what they wanted to start. Their program was based on trying to help kids once they come out of our Social Service System to better themselves and be able to move on. They went to Zoning first and got the letter saying there were no homes in the area at that time. They proceeded from there.

Ms. Mack said the State lifted the freeze on adolescent homes on June 3, 2006.

There was no one present to speak in opposition to this request. Chair Holston closed the public hearing.

Counsel Carr reminded the Board that this was a Special Exception so it did not need to meet the hardship portion of the test.

Ms. Buffington said she felt the intent of the ordinance was not to have too many group homes in any one neighborhood. It is certainly not to keep good people from doing what they want to do. It is unfortunate that the nearest group home is only five houses away from the applicant's property.

Several of the Board members said 350 feet was just too close to an existing group home.

Mr. Brewington said in the case BOA-06-31, 1403 Cliffwood Drive, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the Special Exception denied, seconded by Mr. Parmele. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Cross, Parmele. Nays: None.)

NEW BUSINESS**VARIANCE****A) BOA-06-33: 906 WEST BESSEMER AVENUE - DANIEL J. DONOVAN II REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE GRAYLAND STREET RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING-RS-7, BS-10, CROSS STREET-GRAYLAND STREET. (DENIED)**

Mr. Ruska said Daniel J. Donovan II is the owner of a lot located at 906 West Bessemer Avenue. The lot is located at the northeast intersection of West Bessemer Avenue and Grayland Street on Zoning Map Block Sheet 10 and it is zoned RS-7. The lot contains a single family dwelling. The applicant has installed a privacy fence that exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Grayland Street right-of-way. Zoning Enforcement received a complaint from a citizen that the owner had constructed a fence that was too tall. On May 23, 2006, the property owner was issued a Notice of Violation. Upon receipt of the Notice of Violation, the applicant contacted the Zoning Office and began the variance procedure. The lot is a corner lot. The applicant has stated that the additional height is needed to provide adequate privacy and confine his pet dogs. In reference to Section 30-4-9.6(E)1), measurements: "The fence site shall be measured at the highest point not including columns or posts of the fence section as measured from the grade on the side nearest the abutting property or street." The nearest portion of the fence is adjacent to the sidewalk along the property line adjacent to the Grayland Street right-of-way. This side property line is approximately 60 feet in length. The applicant has kept the fence at least 30 feet from the intersection; thus there is no problem with visibility or sight distance interference as a result of the fence height. The adjacent properties are also zoned RS-7 and the property located on the southern side of West Bessemer Avenue is zoned RM-18.

Chair Holston opened the public hearing.

Daniel Jeffrey Donovan II, 906 West Bessemer Avenue, previously sworn or affirmed, said he was using the fence to confine his pet dogs. He has four of them. If you will look at the layout of the lot, from the back of his house to the neighbor's lot, there is maybe only 5 to 10 foot area, which was previously fenced in, but he added that to expand some additional space for them because they did not have enough room to run around and he was pretty much doing this for them. There is also a large tree in his back yard and it pretty much falls on the line of where he would have to move the fence back to. That is what caused him some hardships. The previous fence was further from the lot line because of the tree. The fence does not conflict with any line of sight issues on Grayland. Several neighbors had told him that they like the fence. He thought it would add value to the neighborhood. He has four Siberian husky dogs and they are known not to bark and are actually very quiet. They can jump over a 4-foot high fence. He did not get a permit to install the fence.

There was no one present to speak in opposition to this request. Chair Holston closed the public hearing.

Chair Holston reopened the hearing to allow another statement by Mr. Donovan.

Mr. Donovan said from Grayland back to the fence it is set back 11 feet.

Chair Holston again closed the public hearing.

The Board discussed the matter and said they could find no unique reason to allow the variance.

Mr. Cross said in the matter of BOA-06-33, 906 West Bessemer Avenue, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference. Based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied. Mr. Parmele seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Cross, Parmele. Nays: None.)

Chair Holston declared a 5-minute break from 3:18 to 3:22 p.m.

APPEAL OF NOTICE OF VIOLATION

A) BOA-06-34: 1545 SUMMIT AVENUE - J. LOPEZ ROOFING COMPANY APPEALS A NOTICE OF VIOLATION IN REFERENCE TO A HOME OCCUPATION NOT OPERATING UNDER THE CURRENT REGULATIONS IN REGARDS TO MORE THAN ONE COMMERCIAL VEHICLE AT THE LOCATION, THE OCCUPANT DOES NOT RESIDE AT THE LOCATION, AND THE SIGNAGE DOES NOT MEET THE MINIMUM SIGN REQUIREMENTS. SECTION 30-5-2.47, PRESENT ZONING- RS-7, BS-29, CROSS STREET-ANDOVER AVENUE. (DENIED)

Mr. Ruska said J. Lopez Roofing is the occupant of the property located at 1545 Summit Avenue. The lot is located on the western side of Summit Avenue east of Andover Drive on Zoning Map Block Sheet 29. The lot is currently zoned RS-7. The Zoning Enforcement Office received a complaint from a citizen on June 1, 2006 in reference to the property at 1545 Summit Avenue. The complaint alleged the property was in violation of the home occupation regulations in regards to the fact that the owner or tenant did not live there; that more than 25 percent of the house was used for the occupation; that other employees report to work at the house, but there is outside storage of materials, a free-standing identification sign located on the property and too many commercial vehicles being parked on the residential property. Zoning Enforcement Officer Ron Fields made a site inspection and found that the property operates as a roofing company, special trade contractor. Attached to your fact sheet are copies of water bills for the roofing company located at 1545 Summit Avenue and for the roofing company's owner's residence, which is located at 1715 McKnight Mill Road. The property owner was issued a Notice of Violation on June 9, 2006 for violation of home occupation regulations. On June 14, 2006 the applicant appealed the Notice of Violation. The adjacent properties are also zoned RS-7.

Chair Holston opened the public hearing.

Celina Lopez, 4503 Southern Webbing Mill Road, previously sworn or affirmed, said Mr. Lopez was her brother-in-law and she worked for his roofing company. They had previously been leasing at another commercial property. Since their 3-year agreement had finished, they had not thought about getting a new location and he was forced into buying a home and did not realize that they were going to get into this type of trouble. They are using this house at 1545 Summit Avenue as commercial office use for a roofing company. If possible, they would like to use this as a full office use for a business. They have taken down the sign. There was a Bobcat and dump truck that was on the property that was used to fix the property. However, those items have been removed from the property. They did have their vehicles there at that address since they were working at that address. They did not know they could not use the property for office use until they came to the house there. Mr. Lopez has another property and he was planning on building on that property and to use it for office. It was also a residential area, but they did rezone it to commercial use. She did not know if the property at 1545 Summit Avenue could be changed to office use or commercial. The basis of her appeal is they had no place to go and they were hoping to use this until something else works out.

Ms. Lopez said Mr. Lopez bought this property through a real estate agent, but she did not know if the agent was aware of what he wanted to use the property for. She was informed that if the real estate

broker had sold Mr. Lopez this property under the auspices that he could run a business out of it, then he or she would have been negligent possibly.

Ms. Lopez asked what could they do with this property with the business being there?

Mr. Ruska said they would have to cease business there immediately. No fines have been levied so far since the Notice of Violation was appealed within the time period prescribed on the notice. If the Board upholds the City on this, then the next step would be to achieve compliance and they would do that through civil penalties.

Chair Holston closed the public hearing.

Mr. Parmele said in the matter of BOA-06-34, 1545 Summit Avenue, he moved that the Zoning Enforcement Officer be upheld and the request for the appeal be denied. Ms. Buffington seconded the motion. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Cross, Parmele. Nays: None.)

RULES AND REGULATIONS

Mr. Ruska said he handed out last month a copy of a suggestion to change the rules and procedures based on the fact that we now have an alternate member. And whereas the Development Ordinance already allows for alternate members of Boards and Commissions at the decision of the City Council, the Board of Adjustment Rules and Regulations does not reference an alternate member. So what he was suggesting that they do is to vote on adding this language to the Rules and Procedures.

This would be Item No. 16, concerning Alternate Members: "An alternate member may sit in lieu of a regular member. When so seated, an alternate member shall have the same powers and duties as a regular member. If more than one alternate member is in attendance, assignment shall be rotated to the extent feasible, except at the election of officers at no time shall more than seven members, including alternate members, participate officially in any meeting or individual hearing."

Mr. Ruska said he would ask that the Board vote and adopt this as part of your procedures .

Mr. Cross moved that this new item be adopted to the Rules and Regulations for the Board of Adjustment, seconded by Mr. Brewington. The Board voted 5-0 in favor of the motion. (Ayes: Holston, Brewington, Buffington, Cross, Parmele. Nays: None.)

Chair Holston asked if there was any update on their total staffing here? Has Mr. Kee been replaced?

Mr. Ruska said Mr. Kee had not been replaced and the hope is that he will continue to serve until his replacement is named.

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There being no further business before the Board, the meeting was adjourned at 3:38 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment
HH/jd.ps